

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAAL LAMAR WELCH,

Defendant-Appellant.

UNPUBLISHED

August 14, 2014

Nos. 315782; 316029

Kent Circuit Court

LC Nos. 12-007559-FH;

09-012721-FH

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

In Docket No. 315782, defendant appeals as of right his conviction for failure to register as a sex offender, first offense, MCL 28.729(1)(a). In Docket No. 316029, defendant appeals as of right his conviction of failure to register as a sex offender, second offense, MCL 28.729(1)(b). We reverse and remand for resentencing in both cases.

Defendant argues that the trial court erred in scoring OV 19 at ten points because defendant's failure to register as a sex offender did not constitute interference with the administration of justice. We agree. In Docket No. 315782, defendant preserved this issue by objecting to the scoring of OV 19 on the same grounds now raised on appeal. MCL 769.34(10). In Docket No. 316029, defendant filed a motion for resentencing in the trial court, and for the reasons stated in *People v Hershey*, 303 Mich App 330, 352-354; 844 NW2d 127 (2013), we find that defendant—contrary to the prosecution's argument—has not waived this issue. Rather, defendant preserved this issue by filing a motion for resentencing. MCL 769.34(10).

“The trial court must assess 10 points for OV 19 if ‘[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.’ “ *Hershey*, 303 Mich App at 342, citing MCL 777.49(c). “[T]he plain and ordinary meaning of ‘interfere with the administration of justice’ for purposes of OV 19 is to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process.” *Id.* at 343 (citation omitted). Moreover, the “administration of justice process,” does not begin until an underlying crime has occurred. *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010). In *Hershey*, the defendant pled guilty for failing to pay child support. *Hershey*, 303 Mich App at 333. “[A]fter [the] defendant was released from jail, a bench warrant was filed because [the] defendant had violated the terms of his probation by failing to report to his supervising agent and by contacting his daughter.” *Id.* In thereafter sentencing the defendant for failing to pay child

support, the trial court scored OV 19 at ten points in part for the defendant's failure to pay child support. *Id.* We reversed, holding that the "defendant's failure to comply with this court-ordered obligation [of child support] did not hinder the process or act of administering judgment by judicial process of the cause in . . . the divorce and child-support matters; defendant's failure to pay child support occurred after the circuit court ordered defendant responsible for child support in that case." *Id.* at 345. "Thus, although defendant failed to comply with the circuit court's child-support order, he did not hamper, hinder, or obstruct the act or process of the circuit court's administering judgment." *Id.* at 345. This Court further concluded that the defendant did not interfere with the administration of justice by violating the terms of probation in the case where he pleaded guilty for failing to pay child support, because a judgment of sentence had already been rendered in that case and was effective. *Id.*

Here, once defendant was convicted of a listed offense, MCL 28.732, "the process or act of administering judgment by judicial process" was complete upon defendant as related to that offense because he was already found guilty of that offense. *Hershey*, 303 Mich App at 344-345. Thus, like the failure to pay child support in *Hershey*, the failure to register as a sex offender did not have any impact upon the underlying judgment. *Id.* In other words, "although defendant failed to [register as a sex offender], he did not hamper, hinder, or obstruct the act or process of the circuit court's administering judgment" in the case pertaining to the "listed offense." *Id.* at 345. We therefore find that OV 19 could not be scored at ten points for interfering with the administration of justice as related to the underlying listed offense.

Moreover, while the prosecution argues that defendant's failure to register as a sex offender interfered with the police's duties under the sex offender act and constituted an interference with the administration of justice, the duties of police under MCL 28.721a and MCL 28.728(1) are monitoring functions that do not involve the administering of judgment to an individual by judicial process. The police are only monitoring sex offenders in order to prevent future dangers more effectively. Thus, we find that under *Hershey*, 303 Mich App at 342-343, the fact that defendant's failure to register interfered with the police's duties under the offender registration statute does not establish that defendant interfered with "the administration of justice" as defined for purposes of OV 19.

Because defendant's sentences are based upon an inaccurate calculation of the guidelines range, which resulted in sentences outside the proper recommended minimum sentence range under the legislative guidelines, defendant is entitled to be resentenced. *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006).

Reversed and remanded for resentencing in both cases. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ David H. Sawyer

/s/ Joel P. Hoekstra